IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 229 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Petitioner(s)

Versus

NIMA LIMITED - Respondent(s)

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Appearance :

MR B.B.NAIK for Petitioner No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 05/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'C' has referred the following question under Section 256(1) of the Income Tax Act, 1961 at the instance of the Commissioner of Income Tax.

"Whether the Appellate Tribunal was right in law in holding that the assessee was entitled to deduction of interest for 12 months for the calendar year 1983 when the debit note was received after the close of the accounting year of the assessee?"

2 The Assessment Year is 1984-85 and the relevant accounting period is calendar year 1983. The assessee, a Public Limited Company is a wholly owned subsidiary of Jyoti Limited. The assessee company debited an amount of Rs.11,49,206/- on 31.12.1983 as interest payable to Jyoti Limited. The Assessing Officer disallowed the claim holding that no interest had been charged prior to the calendar year; that Jyoti Limited had agreed not to charge any interest for the next year; the assessee being a subsidiary of Jyoti Limited was more or less under effective control of management of Jyoti Limited; in

absence of any written agreement there was no contractual obligation on the assessee company to pay such interest; Jyoti Limited had not shown the outstanding balance due from the assessee company in its books as loan upto 30.6.1983; and hence the interest payment had been made by the assessee for considerations other than in the normal course of carrying on business.

3 The assessee carried the matter in appeal. The CIT (Appeals) vide his order dated 8.2.1989 confirmed the disallowance of Rs.11,49,206/-.

4 The assessee preferred Second Appeal before the Tribunal. The Tribunal has vide its order dated 1.3.1993 upheld the claim made by the assessee company. The Tribunal has found that substantial amount was payable by the assessee company to Jyoti Limited. That it was not possible to presume that this would be non interest bearing loan. It would be open to the creditor, according to the Tribunal not to charge or waive the interest, but if any interest is charged by the creditor the debtor is bound to honour the same. The Tribunal has further found that the assessee company is continuously incurring losses and by claiming

deduction for interest payment the assessee company does not derive any advantage, considering the fact that upto Assessment Year 1990-1991 there was no positive income in the hands of the assessee company and there were substantial amounts of carried forward losses and unabsorbed depreciation; while on the other hand the interest paid by the assessee has been brought to tax in hands of Jyoti Limited which is a profit making company. Thus the Tribunal has ruled out any tax planning in light of the facts available on record. Accordingly, the Tribunal has held that the assessee was entitled to the deduction of interest payment.

4.1 The Tribunal has further held that the claim for interest payment is for the period commencing from 1.7.1982 to 30.6.1983 and then from 1.7.1983 to 31.12.1983. The Tribunal has therefore held that even though Jyoti Limited had passed a resolution calling upon the assessee to pay interest for the aforesaid period interest attributable to period between 1.7.1982 to 31.12.1982 does not pertain to the previous year relevant to the Assessment Year of the assessee company and hence interest for the said period is not allowable.

In other words, the Tribunal has held that interest payment for a period of 18 months cannot be allowed when the previous year is constituted of 12 months, namely, calendar year 1983.

5 Mr.B.B.Naik, learned Standing Counsel appearing for the applicant-revenue submitted that Jyoti Limited had passed a resolution only on 18.11.1983 and in absence of any agreement to pay interest Jyoti Limited could not charge interest for past period and if it could not charge interest for the past period the assessee company cannot claim the same, and the same was rightly disallowed by the Assessing Officer. In this connection emphasis was laid on the fact that Jyoti Limited had for the first time treated the outstanding balance due from the assessee as loan only on 30.6.1983. The second contention was to the effect that Jyoti Limited could not on its own, by passing a resolution, impose interest on the assessee company in absence of bi-partite agreement. That the acceptance made by the assessee company was admittedly after 31.12.1983 and hence there was no concluded contract.

5.1 Though served there is no appearance on behalf of the

respondent.

6 It is fallacious on part of revenue to presume that Jyoti Limited has by passing resolution on 18.11.1983 sought to charge interest for the past period. The relevant previous year i.e. accounting period of the assessee is calendar year 1983. Admittedly, the resolution passed by Jyoti Limited on 18.11.1983 is during the accounting period relevant to the Assessment Year under consideration. Therefore, to say that Jyoti Ltd., can call upon the assessee to pay interest only with effect from 18.11.1983 and not between 1.1.1983 to 17.11.1983 is incorrect proposition which cannot be accepted.

7 The fact that Jyoti Limited did not treat the outstanding amount from the assessee company as loan in its books upto 30.6.1983 is wholly irrelevant to the issue. Admittedly, on 30.6.1983, when the accounting period of Jyoti Limited ended, Jyoti Limited had shown outstanding amount in its Books of Account as outstanding loan from the assessee company. This date namely 30.6.1983 falls within the accounting period relevant to the Assessment Year in question in case of the assessee.

8 The contention that interest was unilaterally charged by Jyoti Limited deserves to be stated only to be rejected. Though admittedly necessary entry was made in its books by the assessee company only after receipt of debit note some time in January/February,1984, the same was made as on 31.12.1983. Therefore, to contend that acceptance of the proposal to charge interest was after the Accounting Year is not correct. Once the creditor has called upon the debtor to pay interest, the debtor has passed necessary entry during the Accounting period and rightly made the payment on which the creditor has paid tax it cannot be successfully urged by the revenue that there was no concluded contract. It is not even the case of the revenue that Jyoti Limited was wrongly taxed on the interest amount received by Jyoti Limited from the assessee.

9 The learned Counsel for the revenue has not been able to dispute the fact that by making payment of interest the assessee company does not stand to derive any advantage considering the assessment record of the assessee company, which has been taken note of by the Tribunal. Similarly, that there is actual payment and Jyoti Ltd. has paid tax on the interest received by Jyoti Ltd. is also not disputed.

10 In these circumstances, for the reasons stated hereinbefore, it is not possible to accept any of the contentions raised on behalf of the revenue there being no infirmity in the order of the Tribunal.

11 The question referred to the Court for its opinion is therefore answered in the affirmative i.e., in favour of the assessee and against the revenue. The Reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.MEHTA,J)

(H.N.DEVANI,J)

m.m.bhatt+